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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
CHAWLA, JYOTI	
ART UNIT	**PAPER NUMBER**
1761	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/806,137	SHEPHERD ET AL.	
	Examiner	Art Unit	
	Jyoti Chawla	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 November 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Amendment to claims filed November 7, 2006 has been entered. Claims 1 and 7 have been amended and claims 8-11have been cancelled. Claims 1-7 are pending and are examined in the application.

Claim Rejections - 35 USC § 112

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The previous rejections of claim 4 regarding 35 U.S.C.112 second paragraph rejections have been withdrawn in light of applicant's amendments.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(A) Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over "A Vision of Apple Fries", hereinafter Granny's Apple Fries in view of the combination of Yamazaki (US 3962355) and Fischer (US 3723137).

The references and rejection are incorporated herein and as cited in the office action mailed May 8, 2006.

Regarding the amendments to claim 1, the combination of "Granny's Apple Fries", Yamazaki and Fischer teach wetting the fruit pieces and subsequently dry coating the pieces with an ungelatinized starch source, such as, corn-starch, corn flour, rice flour etc., or a combination thereof. The coating composition according to Fischer can have 28-97% ungelatinized starch sources, i.e., the dry coating consists essentially of ungelatinized starches, such as, cornstarch or rice flour etc., or a combination (Fischer Column 3, lines 60-75). Thus, making coated fruit or vegetable products with dry coating has been known in the art (Granny's Apple Fries, Yamazaki and Fischer). Wetting the food before coating with a dry mixture consisting essentially of ungelatinized starches,

such as, cornstarch and rice flour or a combination of starches has also been known in the art (Fischer). Therefore, one of ordinary skill in the art at the time of the invention would have been motivated to modify the Granny's Apple Fries recipe and use a coating composition consisting essentially of starches as taught by Fischer in order to make the coated apple slices that would make fried apples that have a uniform coating when fried, as intended by the applicant.

Furthermore, regarding the other amendment to claim 1 that recites "freezing the coated apple pieces to produce a frozen apple product and packaging the frozen product of coated apple pieces in predetermined quantities for storage and subsequent distribution to wholesale and retail outlets", the applicant is referred to Fischer, where the reference teaches a dry batter composition and a method to coat fruits and vegetables prior to frying. The coating composition taught by Fischer can be applied to food substrate and the food can subsequently either frozen and shipped to the consumer prior to any cooking step or fried (Column 2, lines 18-20 and Column 4, lines 12-18). Although, Fischer does not specifically teach the packaging step, however, the reference teaches shipping the food product to the consumer. Since it is well known to package the food in predetermined quantities in order to ship to the consumer, therefore, it would have been obvious to one of ordinary skill at the time of the invention that Fischer teaches packaging of the coated food product in predetermined quantities. As discussed in the previous office action, "Granny's Apple Fries" teach Granny Smith apples (claim 2) that are peeled and sliced with a french-fry cutter (mechanical cutter device) and dredged (dry coated) in cinnamon sugar among other seasonings prior to frying. Yamazaki teaches a method of making apple snacks by disclosing that it is conventionally known to clean apples by washing, then paring (peeling), coring, cutting into desired shapes and sizes and seasoning prior to frying (column 1, lines 38-45), as discussed in the previous office action. Further, it has been known in the art to coat fruits and vegetables by first wetting the food and then coating with dry batter (Fischer). It has also been known to either freeze the coated food for storage and shipping or fry the food for immediate consumption (Fischer). Therefore, one of ordinary skill in the art

at the time of the invention would have been motivated to modify "Granny's Apple Fries" and include conventional preparatory steps for making fries such as cleaning, coring and dredging the apple slices in a dry flour combination of corn starch (flour) and rice flour before freezing and packaging the apple fries without frying as taught by Yamazaki and Fischer, in order to obtain a steady supply of consistent quality frozen apple product which can be stored for long periods and shipped as frozen apple fries to markets far from the point of production and the product would yield consistent results whether prepared at home or in a commercial establishment. One would have been further motivated to do so in order to make the frozen apple product when apples are in season, i.e., better tasting apples at lower prices, and sell them all year long.

(B) Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of "Granny's Apple Fries", Yamazaki" and Fischer, as applied to claims 1-3, in view of Higgins

The references and rejection are incorporated herein and as cited in the office action mailed May 8, 2006.

(C) Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of "Granny's Apple Fries", Yamazaki", Fischer and Higgins as applied to claim 4 above further in view of Sloan.

The references and rejection are incorporated herein and as cited in the office action mailed May 8, 2006.

(D) Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over a combination of "Granny's Apple Fries", Yamazaki", and Fischer as applied to claims 1-3 above, in view of Sloan.

The references and rejection are incorporated herein and as cited in the office action mailed May 8, 2006.

(E) Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of "Granny's Apple Fries", Yamazaki", and Fischer as applied to claims 1-3 above, in view the combination of Roberts and Glantz.
The amended claim 7 includes all the limitations of the previously recited claims 7-11 and thus presently amended claim 7 is rejected for the same reasons of record that claims 7-11 have been rejected. The references and rejection are incorporated herein and as cited in the office action mailed May 8, 2006.

Response to Arguments

Applicant's arguments filed November 7, 2006 have been fully considered and 35 U.S.C.112 second paragraph rejection of claim 4 has been withdrawn in light of applicant's amendments.
Applicant's arguments regarding the rejections have also been considered fully and have not been found persuasive.

I) In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "a frozen product of coated apple pieces that can be deep fried to prepare a healthy and tasty alternative to potato French fries" (Remarks, page 5) and "applicant's coating layer is preferably "relatively thin" as described in the specification at page 7, lines 15-16" (Remarks, page 8)) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

II) Applicant argues that the "Granny's Fried Apples" reference does not teach all the steps in the method recited in claim 1. The applicant states "No mention is made in this primary reference of Applicants' steps of: slicing a cored apple into apple pieces, spraying the apple pieces with water and coating the wet apple pieces with a powder consisting essentially of a mixture of corn starch and rice flour. Moreover, there appears no suggestion in this reference of freezing the coated apple pieces to produce a frozen

apple product, and packaging the frozen product of coated apple pieces for storage and subsequent distribution as set forth by the present claims" (Remarks, page 6). In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).
In the instant invention, as discussed in the office action dated May 8, 2003 and the office action above, the references have been used in combination where Granny's Fried Apples teaches that coated and fried Granny Smith apples have been known in the art. The reference is silent as to cleaning and coring the apple; spraying water on the apple pieces; coating the wet apple pieces with a corn starch and flour powder; and freezing the coated apple pieces in predetermined quantities for storage and subsequent distribution to wholesale and retail outlets. However, Yamazaki is being relied upon to show that it has been conventionally known to clean apples by washing, then paring (peeling), coring, cutting into desired shapes and sizes and seasoning prior to frying (column 1, lines 38-45) in making any kind of apple snacks. Fischer, is relied upon to show the conventionality of wetting a fruit or vegetable with a liquid (preferably water) and coating the wet food with dry starch or a combination of various starches, such as, corn starch and rice flour. Fischer is also relied upon to show that it has been known in the art of making fried fruit and vegetable snacks to freeze the coated food and ship to the consumer, where the consumer stores the frozen food product and fries the product for consumption or sale. Thus all the steps claimed in the instant invention in claims 1-3 were well known in the art of making coated frozen fruit or vegetable products at the time of the invention. Therefore, as stated in the previous office action and the office action above, it would have been obvious to the one skilled in the art at the time of the invention to modify "Granny's Apple Fries" and include conventional preparatory steps for making fries such as cleaning, coring and dredging the apple slices in a dry flour combination of corn starch (flour) and rice flour before freezing and packaging the apple fries without frying as taught by Yamazaki and Fischer, in order to obtain a steady supply of consistent quality frozen apple product which can be stored

for long periods and shipped as frozen apple fries to markets far from the point of production and the product would yield consistent results whether prepared at home or in a commercial establishment. One would have been further motivated to do so in order to make the frozen apple product when apples are in season, i.e., better tasting apples at lower prices, and sell the finished product throughout the year.

III) In response to applicant's argument that there is no suggestion of wetting the apple and coating the wet apple in the process taught by Yamazaki reference (Remarks, pages 6-7). The applicant is reminded that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Applicant is referred to the office action above and also from May 8, 2006 where it has been clearly stated that Yamazaki is being relied upon to show that it was conventionally known to clean apples by washing, then paring (peeling), coring, cutting into desired shapes and sizes and seasoning prior to frying (i.e., cooking) (column 1, lines 38-45) in making any kind of cooked apple snacks. Therefore, in an obviousness rejection, the reference does not have to show the entire process or exact steps as explained above.

IV) In response to applicant's argument that there is no suggestion to combine the references (Remarks, pages 7-10), the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, for example, the references "Granny's apple Fries", Yamazaki and Fischer together teach that the steps recited in the amended claims 1-3 were known in the art (See the

explanation in response to argument II) above). "Granny's Apple Fries" teaches French fried Granny Smith apples were introduced in the market on April 8, 2000. Yamazaki teaches making apple chips and Fischer teaches making frozen battered fruit or vegetable products that are shipped frozen and fried at the point of consumption as instantly claimed. Thus all the three references applied to reject claims 1-3 fall in the art of making fried fruit products and thus are analogous art. Regarding the motivation to combine or the incentive supporting the combination, the applicant is referred to the present and previous office action and the explanation provided in step II) above.

V) Regarding Higgins, Sloan, Roberts and Glantz not being able to supplement the combination of other references regarding claims 4-7 (previously claims 4-11), applicant is referred to the rejection in the previous office action.

As stated in the previous office action and above, the combination of "Granny's apple Fries", Yamazaki and Fischer shows the dry coated frozen apple product, however the references do not teach the recited ratio of the two starch components and also the ratio of coating to the fruit in the recited range of the applicant.

Regarding claims 4-5, Higgins has been relied upon to support that cornstarch and rice flour make a good combination in. The ratio of cornstarch to rice flour taught is 10:1 to 1:1 (which encompasses applicant's recited ratio). Higgins further teaches that the ratio taught by the reference is beneficial as it allows for a longer serving time while retaining the fresh fried appearance, texture and taste. Therefore, it would have been obvious to one of ordinary skill in the art to modify the coating composition and include the corn starch and rice flour in the ratio taught by Higgins in order to make a frozen food product which upon frying would retain its fresh fried appearance, texture and taste because the combination of cornstarch and rice flour in the ratio 10:1 to 1:1 prolongs the serving time of the fried foods like French fried potatoes (Higgins, Column 3, lines 54-63). Furthermore, the combination of cornstarch and rice flour coating is clear and does not obscure the natural appearance of the food (Higgins, Column 3, lines 54-63).

Regarding the Sloan reference, the combined references used in claims 1-4, do not teach the food to coating ratio in the recited range. However, the amount of coating on

the fried fruit or vegetable is a matter of personal liking and taste preference, e.g., some prefer a thick coating and others none at all on the fried foods. Thus, one of ordinary skill in the art at the time of the invention would have been motivated to look to the art to find battered fruit or vegetable products, where the amount of coating per pound of fruit or vegetable is different from the one taught by the references. Sloan teaches fried coated food product where the coating comprises of cornstarch (2-10%) as well as rice flour (2-10%) on dry weight basis for the coating composition (Column 3, lines 50-60). Sloan also teaches that if ratio of starch to food is kept in the range of 4-10% (see previous office action for detailed explanation), the holding quality of the fried product is enhanced (Column 4, lines 1-45; Column 6, lines 14-25 and Column 4). Therefore, it would have been obvious to the one with ordinary skill in the art at the time of the invention to use the amount of starch on the fried foods as taught by Sloan (which falls in the recited range of the applicant), in order to obtain crispy fried food that does not form clumps during processing.

Regarding claim 7, the combination of "Granny's apple Fries", Yamazaki and Fischer shows the dry coated frozen apple product cut in slices like a French fried potato, however the references do not teach all the shapes as instantly claimed. However, Roberts and Glantz, teach that foods, such as, potato and apples have been cut into shapes as strips, wedges, curls etc., (e.g., Glantz: Column 2, lines 20-25, Column 2, line 54; Column 6, line 34 teaches apple strips and wedges). Therefore, it has been known in the art of food processing to cut the foods , such as apples in strips, cubes, spirals and wedges as recited in claim 7 (previously claims 7-11). Applicant is further reminded that cutting the apples into various shapes and the freezing would not have involved an inventive step, and do not provide patentable distinction to the claims. Thus, the claimed invention would have been obvious over the prior art of record, absent any clear and convincing evidence and/or arguments to the contrary.

VI) In response to applicant's argument that the examiner has combined an excessive number of references (Remarks, page 8), reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Chawla whose telephone number is (571) 272-8212. The examiner can normally be reached on 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jyoti Chawla
Examiner
Art Unit 1761

MILTON I. CANO
SUPERVISORY PATENT EXAMINER